U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN ANTONIO Date:

IN RE: Obligor:
Bonded Alie[redacted]

IMMIGRATION BOND: Bond Conditi. ned for the Delivery of an Alien under Section 103 of the Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be rejected.

The record indicates that on February 19, 2003, the obligor posted a $7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated July 12, 2003, was sent to the co-obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of Immigration and Customs Enforcement (ICE) on August 26, 2003, at [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On October 9, 2003, the field office director informed the co-obligor that the delivery bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on October 9, 2003. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. Although the obligor dated the appeal November 10, 2003, it was received by ICE on November 17, 2003, or 39 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that the co-obligor asserts that the breach notice was not postmarked until October 10, 2003. The co-obligor, however, provides no evidence to support its argument. The assertion of the co-obligor does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Assuming, arguendo, the obligor is correct, the appeal would have still been untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The field office director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

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[1] Capital Bonding Corporation executed a settlement agreement with the Immigration and Naturalization Service (legacy INS) on February 21, 2003 in which it agreed that any appeals to the AAO subsequent to the execution of this Agreement shall be filed by counsel of record. The AAO will adjudicate the appeal notwithstanding Capital Bonding Corporation's failure to comply with the settlement agreement in this case.